

Guide to Judiciary Policy

Vol 7: Defender Services

Pt A: Guidelines for Administering the CJA and Related Statutes

Appx 4A: Community Defender Organizations: Grants and Conditions

JUDICIAL CONFERENCE OF THE UNITED STATES OF AMERICA AND COMMUNITY DEFENDER ORGANIZATION FOR _____

FISCAL YEAR _____ GRANT AND CONDITIONS

The Community Defender Organization named _____, (hereinafter grantee), operating as a non-profit defense counsel service, has been authorized by the Criminal Justice Act Plan(s) of the District(s) of _____ to provide representation and related defense services to eligible persons pursuant to [paragraph \(g\)\(2\)\(B\)](#) of the Criminal Justice Act, as amended, [18 U.S.C. § 3006A](#) (hereinafter CJA); and

By submitting an application for a sustaining grant for fiscal year _____, the grantee has elected to receive periodic sustaining grants to provide representation and related defense services in lieu of payments under [subsections \(d\)](#) and [\(e\)](#) of the CJA; and

The grantee has submitted the required application materials to the Judicial Conference of the United States (hereinafter Conference) via the Administrative Office of the United States Courts (hereinafter AO), including an annual report setting forth the activities and financial position and the anticipated expenses for the coming year; and

Pursuant to the authority delegated to it by the Conference, the Judicial Conference Committee on Defender Services (Defender Services Committee) has approved, subject to the availability of appropriated funds, a grant of up to _____ for fiscal year _____, commencing on October 1, _____ and terminating on September 30, _____ as further detailed by budget categories contained in your budget chart previously provided by the AO; and

Pursuant to its authority under [subsections \(g\)\(2\)\(B\)](#) and [\(h\)](#) of the CJA, and in consideration of this sustaining grant, the Conference requires that funds will not be expended from the grant except pursuant to the following terms and conditions;

The grantee, by signature of its authorized representative, at the end hereof, signifies its acceptance of and agreement to the terms and conditions set forth below, as well as its agreement to comply with the provisions of the CJA, the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), *Guide to Judiciary Policy*, Volume 7, Part A, any other policies or directives issued by the Conference or the Defender Services Committee, and the court plans of the judicial district and circuit in which the grantee will operate.

Once executed, this agreement must be returned to the AO Office of Defender Services together with a current list of the names, addresses, email addresses, and telephone numbers of all board members.

- 1. USE OF GRANT FUNDS:** Grant funds, once awarded to the grantee, generally will be distributed pursuant to a schedule promulgated by the AO. Except as authorized by the A.O., the grantee will expend such funds only for obligations incurred within the period stipulated in the grant award, and, except as provided in Clause 4, only in accordance with and in such amounts as are provided in designated budget categories as authorized by the Conference. Except as authorized by the AO, grantee will use such funds solely for the purpose of providing representation and appropriate other services in accordance with the CJA, the CJA Guidelines, and the plans of the District and Circuit Courts.
- 2. BANK ACCOUNTS FOR GRANT FUNDS:** Except as authorized by the AO, the grantee will maintain grant funds in federally insured interest-bearing accounts in accordance with provisions of [31 CFR 202](#) and will ensure that amounts in excess of federal insurance limits are collateralized before depositing the funds; grant funds will be maintained separately and will not be commingled with any non-grant funds maintained by grantee; and interest earned on the deposit of grant funds will be deposited with grant funds and may not be obligated or expended by the grantee, and will be returned to the AO at the end of the fiscal year for which the grant was awarded.
- 3. GRANT-RELATED INCOME:** Unless otherwise authorized or directed by the AO, any income arising or developing from grantee operations supported by grant funds will inure to the benefit of the United States, must not be commingled with any non-grant funds maintained by grantee, and must be deposited and maintained in federally insured, interest bearing accounts until returned to the AO along with unobligated grant funds. The grantee may not obligate or expend this income without specific authorization from the AO.

4. REALLOCATING FUNDS: Subject to such limitations as the Defender Services Committee may establish, the grantee may reallocate grant funds between budget categories (i.e., for purposes not specifically identified in the funding justification), provided that the aggregate of the amounts transferred within the fiscal year does not exceed 15 percent of the organization's total fiscal year grant amount approved by the Defender Services Committee. Subject to such limitations as the Defender Services Committee may establish, the AO may authorize reallocation between budget categories in any amount. If during the fiscal year it appears that the grantee's expenditure for benefits will exceed _____ percent of its expenditure for salary by the end of the fiscal year, the grantee must submit a written justification to the Defender Services Committee's Budget Subcommittee and must either obtain its approval to exceed the benefit-to-salary ratio cap or ensure that it is not exceeded.¹

5. RETURN OF UNOBLIGATED OR UNEXPENDED BALANCES: Within 60 days of the end of the fiscal year, the grantee must return to the AO's Accounting Financial Systems Division the actual or estimated amount of all unobligated or unexpended grant funds, grant interest, and grant-related income remaining at the end of the fiscal year, unless otherwise authorized by the AO. Along with funds returned, the grantee must include a statement identifying which portion of the funds returned represents grant funds, grant interest, and grant-related income. The amount of any funds returned as an estimate will be adjusted, if necessary, following completion of the annual AO audit specified in clause 8.

6. ANNUAL REPORTS: In compliance with [subsection \(g\)\(2\)\(B\)](#) of the CJA, the grantee must submit reports each year setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year. The grantee must also submit a report of operations for the prior year. Instructions for completing and submitting the annual reports will be provided to the grantee by the AO at least thirty (30) days prior to the submission date.

7. GRANT RECORDS AND REPORTS: The grantee must keep financial books and all records in accordance with the federal fiscal year unless a waiver is granted by the AO. Such records must be maintained and submitted in such manner and form as required by the AO. Such records must disclose the amount of grant funds, grant interest, and grant-related income received during the fiscal year, as well as the amount of grant funds expended by budget category and the total amount of grant funds expended during the fiscal year.

¹ The limit on benefits is calculated by adding three percentage points to the national average federal public defender organization benefit-to-salary ratio, based on the most recently completed fiscal year.

The record-keeping procedures utilized by the grantee must provide for the accurate and timely recordation and determination of all income and funds received, all expenditures and obligations, and the balance of unexpended and unobligated grant funds, grant interest, and grant-related income. In addition, the grantee must maintain the records in such a manner as to permit the determination of the propriety of all expenditures of grant funds and the charges to specific budget categories.

Grantee must maintain records concerning expenditures of all funds subject to audit (as specified in clause 8) in such a manner as to allow the auditor access to said records without compromising client files and other attorney-client privileged material. The grantee is obligated to maintain the confidentiality of information protected by the attorney-client privilege or any ethical, constitutional, statutory or other mandate.

The AO may inspect and audit the financial records, bank statements, and other records related to the expenditure of grant funds, except for privileged information, at any reasonable time upon request. If, because of inadequate records, documentation, or explanation, the propriety of an expenditure cannot readily be determined, questionable costs and expenditures may be disallowed.

The grantee must maintain and submit such statistical records and reports as may be required by the AO. The grantee must keep financial and statistical records and reports for a period of at least seven years after the expiration of the fiscal year for which the grant was awarded unless otherwise authorized by the AO. If audit issues remain unresolved, records must be retained until all such issues have been resolved.

8. AUDITS: Within 120 days of the end of the fiscal year, a contract auditor (hereafter, "Auditor") selected and paid for by the AO will perform an audit of the grantee's financial activities occurring during the grant period. Such audit will express an opinion on whether the grantee's statement of financial position, report of revenue and expenditures by budget category (as designated in the approved grant), and inventory of equipment, furniture, and furnishings purchased with federal funds present fairly the financial position of the grantee.

The grantee will make its financial records/books and supporting documents available to the Auditor (as specified in clause 7) and will prepare or assist the Auditor in the compilation and preparation of the required statements and reports.

The Auditor will perform the audit in accordance with the *Government Auditing Standards* promulgated by the U.S. Government Accountability Office. In accordance with those standards, the Auditor also will prepare a report on the grantee's internal controls over its financial activities and a report on the grantee's compliance with the terms and conditions of the grant and other rules and regulations pertinent to the grant. The Auditor will also adhere to the principles of confidentiality embodied in the

Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor
of the American Bar Association.

The grantee may contract with local accountants, for any accounting and financial services necessary for the operation of its office, including, but not limited to, the preparation of all required federal and state tax returns; payroll, disbursing, and record-keeping services; and any additional annual audit reports required by the board of directors that do not duplicate the national contract audit. Notwithstanding the foregoing, a grantee may use grant funds to contract with an expert for the purpose of responding to a finding of the Auditor in the annual audit when authorized in advance to do so by the Office of Defender Services.

9. INFORMAL REPORTS: The grantee must submit to the AO informal reports summarizing its financial, staffing, and caseload information, as requested by the A.O. These reports need not be certified.

10. GRANTEE STATUS: Neither the grantee nor any of its employees are officers, employees, or agents of the United States. The United States is in no way obligated under leases, contracts, or other agreements entered into by the grantee.

11. PROPERTY AND SERVICES: Title to all property purchased with grant funds or grant-related income will be in the United States. Procurement of all property and all services other than services under subsection (e) of the CJA must be conducted in a manner promoting full and open competition in the procurement process. Unless otherwise authorized by the AO, no equipment, furniture, furnishings or other property, and no services (except for services as contemplated under subsection (e) of the CJA, leasing of office space, and procurement of liability insurance) may be obtained with such funds at a total cost of more than \$100,000 without advance approval of the AO. In addition, hardware and software purchases consistent with the specifications listed on the National Hardware and Software Lists must be made using the competitive practices outlined in the *Guide to Judiciary Policy*, to the extent possible. Hardware and software purchases not consistent with the lists or with national defender information technology architecture and infrastructure require the prior approval of the AO.

If the grantee needs and agrees to accept excess government property from a federal public defender organization, another community defender organization, another judiciary organization, or government agency, Office of Defender Services may acquire and furnish it to the grantee if Office of Defender Services determines, in writing, that the use of the excess property will (1) reduce the Government's cost of the grant and/or (2) enhance the benefits received from the grant. Grantee agrees to place any such transferred property in use within a reasonable period of time and ensure that the property is maintained and disposed of consistent with other property purchased with grant funds and belonging to the United States.

The grantee may not sell, assign, transfer, dispose of, or encumber any property of the United States, having an acquisition cost of more than \$500 without the prior approval of the AO.²

The grantee must maintain an inventory of all United States property reflecting the date and cost of purchase of such property; the date of receipt by transfer, if applicable; and the date and manner of disposition of excess or surplus property. This inventory must be available to the AO upon request.

Grantee must (1) provide the AO with at least 15 working days advance notification of its intention to enter into or renew a lease for office space and (2) obtain AO approval prior to initiating lease negotiations. Notice must include the total number of square feet, cost per square foot, the duration of the lease, and certification that at least two other competitive proposals were considered.

12. DISSOLUTION OF GRANTEE ORGANIZATION OR TERMINATION OF

GRANT FUNDS: The grantee may dissolve on its own accord in accordance with the laws of the state in which it is organized. Grantee must provide the AO, chief judge of the district court, and chief judge of the court of appeals 90 days advance notice of its intent to dissolve. Additionally, the Conference in its discretion may determine to terminate or not renew the grant. In either event, unless otherwise authorized by the AO, the grantee must properly inventory and make available for reclamation, all property in the care and custody of the grantee purchased with grant funds or related income. Within 75 days of dissolution, the Auditor will perform a final financial audit of the grant. The audit will be of the same scope as discussed in clause 8. Upon receipt of the report of this audit, grantee must remit to the AO Accounting Financial Systems Division all remaining unobligated or unexpended grant funds, grant interest, and grant-related income. The United States will not be responsible for any obligations or debts incurred by the grantee and the grantee must hold the United States harmless for such obligations or debts.

13. MULTI-SERVICE DEFENDER ORGANIZATIONS: Consistent with clause 2 of this agreement, if the grantee is part of a larger defender organization which is not exclusively providing services under the CJA, grant funds received from the Conference pursuant to the CJA, grant interest, and grant related income may not be commingled with those of the general organization unless otherwise authorized by the AO. Also, expenses, inventory, payroll, and other records pertaining to CJA funds and operations of the grantee must be maintained separately by the grantee unless otherwise approved by the AO.

² For guidance regarding procedures and preferred methods of disposal of property, grantees should consult the *Guide to Judiciary Policy*, Vol. 16, Ch. 5 (Personal Property).

14. TRAVEL, MEALS, AND LODGING: The grantee's reimbursement policies regarding expenses for official travel, meals, and lodging must be in writing. Grantee must furnish the AO a current copy of the written policies and all changes thereto. Unless approved by the AO, grantee's reimbursement policies for official travel, lodging, and meals may not exceed the maximum allowances to be paid for per diem, actual expenses, and travel prescribed for federal judiciary employees. Grantee must maintain records of travel and reimbursement in a form acceptable to the AO.

Grantee must follow the policies outlined in the Federal Defenders Operations Manual, Chapter 8, policy memoranda from the AO Office of Defender Services, and Volume 19, Chapter 4 of the *Guide to Judiciary Policy*, with regard to travel inside and outside the district served by the Grantee.

15. PERSONNEL: Personnel policies and other terms and conditions of employment must be in writing. A current copy of such policies, and subsequently, any changes to those policies, must be furnished to the AO.

Grantee must maintain leave records in a form acceptable to the AO.

No personnel vacancy may be filled without prior notice to the AO. Such notice must include all relevant data concerning the employee candidate, including his or her name, position, starting salary (including grade and step for graded employees), education, experience and compensation history and any annual leave credit for prior experience. Information regarding attorneys must indicate the month and year they received their law degree, the month and year they first became a member of a bar, and their prior relevant work experience.

Grantee must conform employee benefit policies on leave, holidays, hours worked, and payment of bar dues to those applicable to federal public defender organizations, unless a request for a variance is submitted to and approved by the Defender Services Committee. Grantee must provide Office of Defender Services with notice at least 90 business days in advance of any proposed changes to the above referenced policies or any other policies that may impact the organization's current or future costs.

16. INVESTIGATIVE, EXPERT, OR OTHER SERVICES: Pursuant to [subsection \(e\)](#) of the CJA, and to the extent that they are necessary for adequate representation of a person who is financially eligible under the CJA, the grantee may engage and compensate investigators, experts, or others from grant funds made available for that purpose.

17. BUSINESS, ENTERTAINMENT, OR PERSONAL EXPENSES: The grantee may not expend grant funds for business or personal entertainment; professional or

association dues, memberships, or fees; or items of property or services of a personal nature.

18. TRAINING: Funds for training of employees are provided in the "other services" budget category of the grant. Grantees must submit annual reports of training activities including travel and other expenses associated therewith.

19. EMPLOYMENT: The grantee may not discriminate against any employee, or applicant for employment, on the basis of race, color, national origin, religion, sex, age,³ or disability. The grantee may not hire, promote or advance within the organization any individual who is a relative⁴ of: (1) the federal defender, (2) any superior of the federal defender, or (3) any member of the board of directors. No employee of the grantee may hire, promote, advance, or advocate the hiring, promotion or advancement of his or her relative by the grantee.

The grantee agrees to place in effect a program for providing equal employment to all persons regardless of their race, color, national origin, religion, sex, age, or disability. This program must encompass all facets of personnel management including recruitment, hiring, promotion, and advancement. The program must also provide for a system, whereby all applicants for employment, and all employees, may seek timely redress of discrimination complaints. A copy of the grantee's program will be filed with the Office of Defender Services.

Upon request, grantee must submit to the AO statistical and other reports relating to its equal employment opportunity practices. Grantee also agrees to notify the Office of Defender Services of any equal employment opportunity-related grievance or suit filed against the organization or any of its employees and of the outcome of all such grievances or suits, and upon request, must provide the Office of Defender Services with any additional information regarding any such grievance or suit.

20. OUTSIDE PRACTICE OF LAW: Unless otherwise authorized by the AO, no employee of the grantee organization (including the federal defender) may engage in the practice of law outside the scope of his or her official duties with the grantee. Notwithstanding this prohibition, an employee may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the employee's family.⁵

³ Judicial Conference policy with respect to age discrimination is that the complainant must have been at least 40 years of age at the time of the alleged discrimination.

⁴ For purposes of this clause, the term "relative" is defined in [5 U.S.C. § 3110\(a\)\(3\)](#).

⁵ For purposes of this clause, the term "family" includes all relatives listed in [5 U.S.C. § 3110\(a\)\(3\)](#).

21. LIABILITY INSURANCE: Unless otherwise authorized by the AO, grantee must maintain insurance, in reasonable amounts, to cover the costs of representation and liability for claims alleging malpractice, negligence, unfair personnel practices, and "errors and omissions" of officers, directors, and employees of the organization. Upon receiving or amending coverage, grantee must notify the AO of the amount of coverage per event, the aggregate limit, the amount of deductible, and the cost for each type of insurance obtained, and must certify that competitive proposals were sought.

Grantee also agrees to notify the Office of Defender Services of any such claims filed and their disposition, and upon request must provide the Office of Defender Services with any additional information regarding any such claim.

22. CODE OF CONDUCT: The grantee must adopt the Model CDO Code of Conduct. The grantee may seek a variance of one or more of the provisions from the AO's Office of Defender Services.

A copy of the grantee's code of conduct and any subsequent revisions must be filed with the AO. The grantee must inform the AO of significant violations of the code of conduct and, upon request, must provide a written report to the AO.

23. CHANGES OR MODIFICATIONS: Upon their adoption, the grantee must forward to the AO any amendment to the articles of incorporation or the by-laws under which the grantee operates; the grantee must also notify the AO of any changes in the grantee's board of directors.

24. PAYMENTS FROM OR ON BEHALF OF CLIENTS: Except as authorized pursuant to [subsection \(f\)](#) of the CJA and corresponding provisions in the CJA Guidelines, neither the grantee nor its employees will take, request, demand, accept, receive or agree to receive anything of value from or on behalf of a person who is to be, is being, or has been furnished representation by grantee. Grantee will take appropriate measures to enforce this clause and advise the AO of any violation.

25. NON-ASSIGNABILITY: No obligations or responsibilities of the grantee, and no grant funds or benefits accruing under the grant, may be transferred, assigned, sub-contracted, or otherwise conveyed without the express written approval of the AO, except as specifically authorized in the Grant and Conditions.

26. FAILURE TO COMPLY WITH TERMS AND CONDITIONS: In the event the grantee fails to comply substantially with any of the terms or conditions of the grant award set forth herein, or it is unable to deliver the representation and other services which are the subject of this agreement, the Conference, or its authorized representative, may reduce, suspend, or terminate, or disallow payments under this grant award as it deems appropriate. The Conference, or its authorized representative, must give notice to the grantee of an intent to reduce, suspend, or terminate payments

at least 10 days prior to taking action. Such notice must indicate the intended action and the reason therefor. The Conference reserves the right to pursue all remedies, including, but not limited to, recovery of monetary damages and accrued interest, for grantee's failure to comply with any of the terms and conditions of the grant award or to deliver the representation and other services which are the subject of the agreement.

DATE

AUTHORIZED REPRESENTATIVE OF THE
COMMUNITY DEFENDER ORGANIZATION FOR
